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VIA eFILE

PATENT APPLICATION
Docket No. 13768.421.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)
	James T. Pinkerton, et al.)
Serial No.:	10/666,086)
Filed:	September 10, 2003)
Conf. No.:	8991) Art Unit
) 2457
For:	MULTIPLE OFFLOAD OF NETWORK STATE)
	OBJECTS WITH SUPPORT FOR FAILOVER)
	EVENTS)
Examiner:	Yves Dalencourt)
Customer No.:	47973)

TRANSMITTAL FOR REQUEST TO CORRECT IMAGE FILE WRAPPER

VIA eFILE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Request to Correct Image File Wrapper as requested by the Examiner of the above-identified Application.

X To render the transmitted Request to Correct Image File Wrapper timely filed, enclosed are the following:

X The Request to Correct Image File Wrapper

- X Exhibit referenced in the Request to Correct Image File Wrapper, including a copy of a return receipt postcard dated and stamped by the Office, and itemized to identify at least a form PTO-1449 not currently in the Image File Wrapper.
- X No fee is believed necessary for this request that the Office correct the mistake it made in omitting the previously filed form PTO-1449.
- X Although no fee is believed necessary, the Commissioner is hereby authorized to charge payment of the following fees associated with this communication, or credit any overpayment to, Deposit Account No. 23-3178.
- X Any fees under 37 C.F.R. § 1.16
- X Any fees under 37 C.F.R. § 1.17 (including any petition fees should a petition to the Director be needed to correct the Image File Wrapper, in which case the attached Request should be considered a Petition therefore).

Dated this 26th day of January, 2009.

Respectfully submitted,



RICK D. NYDEGGER
Registration No. 28,651
COLBY C. NUTTALL
Registration No. 58,146
Attorneys for Applicant
Customer No. 47973

VIA eFILE

PATENT APPLICATION
Docket No. 13768.421.2

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REQUEST TO CORRECT IMAGE FILE WRAPPER

VIA eFILE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Please find enclosed the following:

Comments begin on page 2 of this paper.

An **Exhibit** including Applicant's full submission of June 6, 2005 is attached following page 4 of this paper.

COMMENTS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended in the telephonic discussion regarding this case as held on January 26, 2009. These remarks are consistent with those discussed.¹ Accordingly, correction of the Image File Wrapper and consideration of the references cited in the omitted form PTO-1449 is respectfully requested.

As discussed with the Examiner, there appear to be two errors in the Image File Wrapper, and correction of each is requested. For the first, the Office appears to have omitted a portion of Applicant's submission filed on June 6, 2005. As a result of this error, the Office has not included a timely filed form PTO-1449 in the Applicant's Image File Wrapper. Accordingly, correction thereof is respectfully requested. The second errors relate to the consideration and signing-off of references submitted by the Applicant in a two form PTO-1449. For example, apparently as a result of failing to include the form PTO-form 1449 from the submission of June 6, 2005, the Office has also failed to consider and/or sign-off on the references cited thereon. Additionally, Applicant's form PTO-1449 filed on September 19, 2003 identified five references. In the Office Action dated May 4, 2007, the Examiner signed off on only three of those references, but did not initial by the two non-patent literature references. Appropriate correction is thusly being requested to: (1) correct the Image File Wrapper by including the previously submitted form PTO-1449; and (2) have the Examiner consider the references identified in the omitted form PTO-1449.

A. Correction to Include Omitted form PTO-1449 of June 6, 2005

In more particular detail, the Image File Wrapper for the pending case includes an entry on June 6, 2005 for an "Information Disclosure Statement (IDS) Filed (SB/08)." Upon a review of that entry, the information scanned in and entered by the Office includes: an Information Disclosure Statement (2 pages); a Certificate of Mailing by Express Mail (1 page); and a Transmittal Letter (2 pages). Applicant's own files also include a submission for June 6, 2005, and include the above-referenced Information Disclosure Statement, Certificate of Mailing, and Transmittal Letter. In addition, however, Applicant's files also include a form PTO-1449 listing two references (2 pages); and a return receipt postcard stamped by the USPTO with a date of June 6, 2005. A copy of the submission as stored in Applicant's files is included in the Exhibit attached hereto.

¹ During the telephonic discussion which relayed the same background included herein, the Examiner requested that Applicant's representative prepare a request to have the Image File Wrapper corrected, and include a copy of the return receipt postcard and documents itemized on the postcard.

As noted in M.P.E.P. § 503, a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. In the present case, the following items are itemized on the postcard:

- (1) Transmittal Letter (2 pgs, in triplicate);
- (2) Information Disclosure Statement (2 pgs);
- (3) Form PTO-1449 Listing All Cited References (2 pgs); and
- (4) Certificate of Express Mailing Label No. EV 660685803 US.

Inasmuch as the postcard was stamped with the date of June 6, 2005 and specifically itemizes, *inter alia*, the form PTO-1449 and the Certificate of Mailing that are not currently included in the Image File Wrapper for the Application, Applicant respectfully submits that *prima facie* evidence has been submitted for the receipt in the Office of the attached form PTO-1449 and Certificate of Mailing. Applicant therefore respectfully requests that the Office promptly correct the Image File Wrapper to include the previously submitted PTO-1449 and Certificate of Mailing.

B. Consideration of Cited references on form PTO-1449 of September 19, 2003 and June 6, 2005

As referenced above, the form PTO-1449 submitted by Applicant with an Information Disclosure Statement on September 19, 2003, identified three patent references and two non-patent literature documents. Copies of the non-patent literature documents were also provided, and the form PTO-1449 and copies of the non-patent literature documents can be found in the Image File Wrapper with a date of September 19, 2003. In the Office Action of May 4, 2007 the Office considered the patent references and the previously assigned Examiner initialed next to each of the three patent references. That Examiner did not, however, initial or strike-through either non-patent reference that was cited. Applicant therefore respectfully requests that the newly assigned Examiner consider the references not previously signed off.

With respect to the form PTO-1449 filed by Applicant on June 6, 2005, Applicant notes that the two references cited thereon have not been officially signed-off by the Examiner. Such failure is likely due to the omission of the form in the file wrapper as discussed above. Accordingly, Applicant also respectfully requests that the references of the form PTO-1449 of June 6, 2005 also be considered by the Examiner upon correction of the Image File Wrapper for the present application.

CONCLUSION

In view of the comments and notes above, Applicant respectfully requests further action by the Office to correct the file wrapper of the present application. Specifically, Applicant requests:

- (1) The File Wrapper be corrected to include the form PTO-1449 and Certificate of Mailing as filed on June 6, 2005;
- (2) The references included on the form PTO-1449 filed on June 6, 2005 be considered and signed-off by the Examiner; and
- (3) At least the two non-patent literature documents on the form PTO-1449 filed on September 19, 2003 be considered and signed-off by the Examiner.

In the event that the Office finds any impediment to a prompt correction of the File Wrapper and consideration of all references cited by Applicant, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 26th day of January, 2009.

Respectfully submitted,



RICK D. NYDEGGER

Registration No. 28,651

COLBY C. NUTTALL

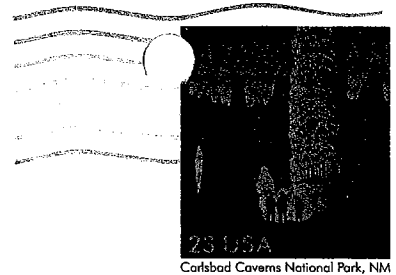
Registration No. 58,146

Attorneys for Applicant

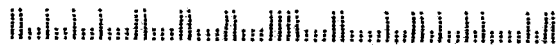
Customer No. 47973

A handwritten signature in black ink, consisting of stylized cursive letters, likely reading "K. A." or similar.

A circular black and white stamp. The outer ring contains the text "OIP" at the top and "PATENT & TRADEMARK OFFICE" at the bottom. The center of the stamp contains the date "JUN 06 2005".



100



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EXPRESS MAIL LABEL NO.: EV 660685803 US PATENT APPLICATION
Docket No.: 13768.421.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRANSMITTAL FOR INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing and pursuant to 37 C.F.R. § 1.97 is an Information Disclosure Statement.

Enclosed also are the following designated documents, as required under 37 C.F.R. §§ 1.97 and 1.98:

- X Form PTO-1449 list of two (2) references submitted for consideration.
- ___ Legible copies of the listed references or their relevant portions.
- ___ All English translations of each non-English reference, if any, within the possession, custody, control or availability of anyone designated in 37 C.F.R. § 1.56(c) (see 37 C.F.R. § 1.98(c)).

The following are included within the Information Disclosure Statement if applicable and as required under 37 C.F.R. § 1.98:

- ___ Concise explanation of relevance of each reference not in English and unaccompanied by an English translation.
- ___ Statement that certain listed references not enclosed are substantially cumulative of an enclosed reference.
- ___ Statement that certain listed references not enclosed were previously cited by or submitted to the Office in the identified

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VERNON R. RICE §
OF COUNSEL

prior application which is relied upon for an earlier filing date under 35 U.S.C. § 120.

____ Legible Copies of previously filed Information Disclosure Statement for application Serial No. _____, filed _____.

In order to secure consideration of the items designated above, one or more of the following, if required, is also enclosed:

____ Promptness Certification.

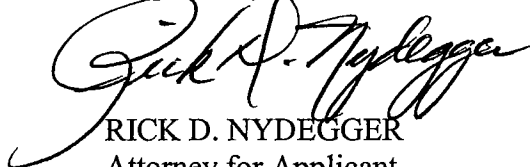
____ Check No. _____ in the amount of \$ _____ constituting submission fee under 37 C.F.R. 1.17(p);

____ Petition for Consideration and Check No. _____ in the amount of \$ _____.

X In the event that 37 C.F.R. § 1.97(c) applies and the Examiner is not satisfied that the Promptness Certification meets the requirements of 37 C.F.R. § 1.97(e), or in any other event remediable by a fee, please credit any over payment or charge any additional fees to Deposit Account No. 23-3178 of the undersigned.

Dated this 6th day of June, 2005.

Respectfully submitted,



RICK D. NYDEGGER
Attorney for Applicant
Registration No. 28,651
Customer No. 47973

EXPRESS MAIL LABEL NO.: EV 660685803 US

PATENT APPLICATION
Docket No.: 13768.421.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
	James T. Pinkerton, et al.)
Serial No.:	10/666,086) Art Unit
Filed:	September 19, 2003) 2142
Confirmation No.:	8991)
For:	MULTIPLE OFFLOAD OF NETWORK STATE OBJECTS WITH SUPPORT FOR FAILOVER EVENTS)
Examiner:	Not Yet Known)

INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. § 1.97

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

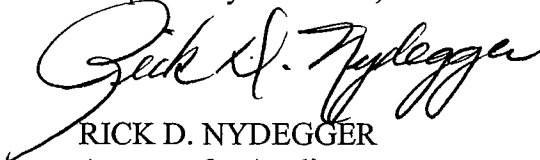
Please find, pursuant to 37 C.F.R. § 1.98(a)(1), the enclosed Form PTO-1449 which contains a list of all patents, publications, or other items that have come to the attention of one or more of the individuals designated in 37 C.F.R. § 1.56(c). While no representation is made that any of these references may be "prior art" within the meaning of that term under 35 U.S.C. §§

102 or 103, the enclosed list of references is disclosed so as to fully comply with the duty of disclosure set forth in 37 C.F.R. § 1.56.

Moreover, while no representation is made that a specific search of office files or patent office records has been conducted or that no better art exists, the undersigned attorney of record believes that the enclosed art is the closest to the claimed invention (taken in its entirety) of which the undersigned is presently aware, and no art which is closer to the claimed invention (taken in its entirety) has been knowingly withheld.

Dated this 6th day of June, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger", written in a cursive style.

RICK D. NYDEGGER
Attorney for Applicant
Registration No. 28,651
Customer No. 47973

RDN:kcs
KCS0000005930V001

EXPRESS MAIL LABEL NO.: EV 660 685 803 US

Form PTO-1449

Sheet 1 of 2

Applicant: James T. Pinkerton, et al.

Serial No.: 10/666,086

Att'y Docket No.: 13768.421.2

Filing Date: September 19, 2003

Group: 2142

Confirmation No.: 8991

For: MULTIPLE OFFLOAD OF NETWORK STATE OBJECTS WITH
SUPPORT FOR FAILOVER EVENTS

INFORMATION DISCLOSURE CITATIONS MADE BY APPLICANT

U.S. Patent Publications

<u>Examiner Initial*</u>	<u>Publication Number</u>	<u>Pub. Date</u>	<u>Name</u>	<u>Class</u>	<u>Sub Class</u>	<u>Filing Date</u>
_____ A1.	2003/0105977	06/05/03	Brabson, et al.	713	201	12/05/01
_____ A2.	2003/0167346	09/04/03	Craft, et al.	709	250	03/07/01

Examiner:

Date Considered:

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

EXPRESS MAIL LABEL NO.: EV 660 685 803 US

Form PTO-1449

Sheet 2 of 2

Applicant: James T. Pinkerton, et al.

Serial No.: 10/666,086

Att'y Docket No.: 13768.421.2

Filing Date: September 19, 2003

Group: 2142

Confirmation No.: 8991

For: MULTIPLE OFFLOAD OF NETWORK STATE OBJECTS WITH
SUPPORT FOR FAILOVER EVENTS

References Cited by Applicants

While the filing of Information Disclosure Statements is voluntary, the procedure is governed by the guidelines of Section 609 of the Manual of Patent Examining Procedure and 37 C.F.R. §§ 1.97 and 1.98. To be considered a proper Information Disclosure Statement, Form PTO-1449 shall be accompanied by a copy of each listed patent or publication or other item of information and a translation of the pertinent portions of foreign documents (if an existing translation is readily available to the applicant), an explanation of relevance of each reference not in the English language, and should be submitted in a timely manner as set out in MPEP Sec. 609.

Examiners will consider all citations submitted in conformance with 37 C.F.R. § 1.98 and MPEP Sec. 609 and place their initials adjacent the citations in the spaces provided on this form. Examiners will also initial citations not in conformance with the guidelines which may have been considered. A reference may be considered by the Examiner for any reason whether or not the citation is in full conformance with the guidelines. A line will be drawn through a citation if it is not in conformance with the guidelines AND has not been considered. A copy of the submitted form, as reviewed by the Examiner, will be returned to the applicant with the next communication. The original of the form will be entered into the application file.

Each citation initialed by the Examiner will be printed on the issued patent in the same manner as references cited by the Examiner on Form PTO-892.

The reference designations "A1," "A2," etc. (referring to Applicant's reference 1, Applicant's reference 2, etc.) will be used by the Examiner in the same manner as Examiner's reference designations "A," "B," "C," etc. on Office Action Form PTO-1142.

KCS0000005929V001

Examiner:

Date Considered:

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.10)


Applicant(s): James T. Pinkerton, et al.

Docket No.
13768.421.2Serial No.
10/666,086Filing Date
September 19,
2003Confirmation No.
8991Examiner
Not Yet KnownGroup Art Unit
2142

Invention: MULTIPLE OFFLOAD OF NETWORK STATE OBJECTS WITH SUPPORT FOR FAILOVER EVENTS

I hereby certify that the Transmittal letter (2 pages) (in triplicate); Information Disclosure Statement (2 pgs); Form PTO-1449 Listing all Cited References (2 pgs); and postcard are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 6, 2005.

Kendell Steele

(Typed or Printed Name of Person Mailing
Correspondence)

(Signature of Person Mailing Correspondence)**EV 660 685 803 US**

("Express Mail" Mailing Label Number)

KCS0000005933V001